

EXHIBIT 11

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: :
: Master File No.
Global Brokerage, Inc. : 1:17-cv-00916-RA
F/k/a FXCM, Inc. :
Securities Litigation :
----- :

**** C O N F I D E N T I A L ****

REMOTE VIDEO DEPOSITION OF:

FRANK J. COZZARELLI
FRIDAY, MAY 22, 2020

REPORTED BY:

SILVIA P. WAGE, CCR, CRR, RPR

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these matters.

So, you know, we're not going to sit here and have gotcha moment saying, hey, you just said you're going to testify to all these matters, but you already know what we testified to. Let's just move along.

MS. DePALMA: Okay. I think you know

--

MR. KIM: [INSTRUCTION] I'm directing

-- I'm directing him not to answer the question.

Q. Okay. So, Mr. Cozzarelli, are you following your Counsel's advice and refusing the to answer the question as to whether you are prepared to testify regarding these topics?

A. Well, I'm following my Counsel's instructions. I know that we've objected to certain things and I'll answer within the scope of the matters that are -- my Counsel previously advised you I would testify to.

Q. Okay. Thank you for that clarification.

And are you authorized to testify on behalf Shipco with respect to the categories of information as discussed with your Counsel?

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2 A. Well, as my Counsel told you, the
3 scope that he's agreed with you would be subject
4 matter of this deposition and I would testify to.
5 I am authorized to testify to those matters by
6 the company.

7 Q. Okay. Thank you.

8 And are you the person at Shipco who
9 is most knowledgeable about the topics on which
10 you will be testifying?

11 A. I would say so.

12 Q. Okay.

13 A. To the best of my knowledge.

14 Q. Okay. Now, in this deposition
15 notice, there are certain topics relating to Scan
16 Group's trading in FXCM securities, for example,
17 Topic No. 3.

18 Do you see that?

19 A. Yes.

20 Q. Are you authorized to provide
21 testimony on topics relating to Scan Group, as
22 modified by your attorney's response to us in the
23 meet and confer process?

24 A. Yes, ma'am.

25 Q. Okay, thank you.

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2 Now, when did you first learn that
3 you would have to give a deposition in this
4 litigation?

5 A. Friday.

6 Q. And who told you?

7 A. Klaus Jepsen was originally going to
8 be the witness, but due to the way this is being
9 conducted, he would not be able to participate
10 either in person or via conference link because
11 of where he is.

12 Q. Okay. Did you meet with anyone to
13 prepare for this deposition?

14 A. My lawyers. I mean, Shipco's
15 lawyers.

16 Q. And how many times did you meet with
17 them?

18 A. For prep -- I met with the lawyers
19 several times having to do with this litigation.
20 I don't think that's what you're asking me.

21 If you're asking me when did I meet
22 with them to prepare for the deposition, as I
23 said earlier, I think it was Monday. Not "I
24 think," I know it was Monday.

25 Q. And did you meet with Mr. Kim and

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2 Mr. Baker?

3 A. I met with Mr. Kim at first,
4 Mr. Baker then joined in.

5 Q. And was anyone else at the meeting?

6 A. No, ma'am; my Schnauzers.

7 Q. Okay. And how long did that meeting
8 -- how long was that meeting?

9 A. About two hours.

10 Q. And how did you meet, by video
11 conference or phone, for example?

12 A. We did a video conference.

13 Q. Okay. And I think you already
14 probably answered this.

15 But was this deposition preparation
16 the first time you met with your attorneys?

17 A. No, I met with Mr. Rosen. I've met
18 -- I've talked to Mr. Kim several times. I've
19 talked to Mr. Rosen several times. I've met with
20 Mr. Rosen personally. I don't think Mr. Kim and
21 I met personally, to the best of my recollection,
22 other than the video, and then we met virtually.

23 Q. Okay. And, aside from your
24 attorneys, have you communicated with anyone else
25 in preparation for your deposition today?

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2 A. I did communicate with one of my
3 colleagues in Denmark to confirm a question that
4 I had in my mind with regard to the stock
5 position.

6 Q. And what was the name of your
7 colleague?

8 A. Lars Stroyer.

9 Q. It might be helpful if you could just
10 spell that for the record, if you don't mind.

11 A. I'm not going --

12 Q. If you can.

13 A. -- to give you the -- there's some
14 odd letters. But it's S-T-R-O-Y-E-R is his last
15 name. His first name is Lars, L-A-R-S.

16 Q. Thank you for that.

17 And when did you speak with
18 Mr. Stroyer?

19 A. I -- I checked with -- I sent him an
20 e-mail Tuesday or Wednesday and he responded
21 immediately. I didn't speak to him.

22 Q. So you conversed via e-mail; is that
23 correct?

24 A. That's right.

25 Q. Okay. And did you review any

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the Second Amended Consolidated Securities Class
Action Complaint.

I reviewed a document called Opinion
and Order by Judge Ronnie Abrams that was dated
-- date filed was 3/28 of '19.

I reviewed my declaration, which
looks to be from January of 2020. I think I
signed it in December, on December 27th. That
was the file date I gave you.

I reviewed the notice of deposition
of Lead Plaintiff Shipco Transport.

I reviewed the Plaintiff's Responses
and Objections to Defendant's First Request for
Production.

I reviewed the trades, the slips, the
trade slips.

I reviewed the Lead Plaintiff's
Amended Responses and Objections to Defendant's
First Set of Interrogatories.

I reviewed Lead Plaintiff's Amended
Responses and Objections to Defendant's Notice of
30(b)(6) Deposition.

And I reviewed a summary of the
trades that -- the purchases and, I think, we --

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2 I picked up or we picked up that there were,
3 actually, 3400 shares that were sold at some
4 point in time. The exact date escapes me. But
5 those are the things that I reviewed.

6 Q. Okay. Thank you for that very
7 complete list.

8 And, for the record, it looks like
9 you were leafing through some documents.

10 What were you looking at?

11 A. Those documents that I reviewed. I
12 just looked at the title pages.

13 Q. Okay. So you were looking at copies
14 of those documents printed out?

15 A. Yes, ma'am.

16 Q. Okay. So, as we talked about
17 earlier, there are certain topics relating to
18 Scan Group's trading in FXCM securities.

19 How did you prepare to provide
20 testimony relating to Scan Group?

21 A. I went and I looked at the trades
22 that occurred and I have recollection of events
23 pertaining to Scan Group's acquisition of shares
24 and I don't think that were many documents to
25 look at other than the trades purchase. I guess,

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2 you call them purchases.

3 Q. Okay. And did you communicate with
4 anyone at Scan Group in preparation for the
5 deposition?

6 A. I -- well, Lars Stroyer is the only
7 person I talked to to confirm something.

8 Q. And, just for the record, on how many
9 occasions did you communicate with Lars? I'm
10 sorry, Mr. Stroyer.

11 A. Preparation for the deposition, the
12 one time.

13 Q. Okay.

14 A. I communicate with Lars routinely
15 about various matters.

16 Q. And aside from the records pertaining
17 to Scan Group's investments in FXCM, did you
18 review any other documents from Scan Group in
19 preparation for the deposition today?

20 A. No.

21 Q. Okay. So I'd like to turn to a
22 different topic and get some general background
23 information for you.

24 So could you just walk me through
25 your educational history starting with college?

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2 A. I went to Rutgers Law -- Rutgers
3 undergraduate, got a degree in economics; went to
4 Seton Hall Law School and that's it.

5 Q. And when did you graduate from
6 Rutgers?

7 A. 1974.

8 Q. And when did you graduate from Seton
9 Hall Law School?

10 A. '77.

11 Q. Okay. And are you currently licensed
12 to practice law?

13 A. No.

14 Q. Were you ever licensed to practice
15 law?

16 A. At one time.

17 Q. And in what state?

18 A. New Jersey.

19 Q. And for what years?

20 A. I don't remember. I think it was
21 probably '77 up until 2016.

22 Q. And your law license is no longer
23 active; is that correct?

24 A. Correct.

25 Q. And what was the reason for your law

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2 license expiring, retirement or...

3 A. It was a combination of different
4 things. But I was -- I was the subject of an
5 ethics complaint at one point when I was in
6 private practice going back some decades ago and
7 I had enough.

8 Q. Okay. And you said you had been the
9 "subject of an ethics complaint"; is that
10 correct?

11 A. Yes, that's correct.

12 Q. And what was the nature of the
13 complaint?

14 A. I -- it had to do with -- the nature
15 of the complaint? You want a very high level.

16 The very high level is they wanted to
17 conduct random audits of my accounts and that
18 became a whole big involved process and it just
19 got to be way too much to deal with.

20 Q. Okay. Was the complaint held -- I'm
21 sorry.

22 Was the complaint heard in -- strike
23 that.

24 In what court or what courts was the
25 ethics complaint heard?

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2 A. I have to look at -- I got to -- I'm
3 going to look at a paper exhibit, which is the
4 chart. I'm going to take the chart so I can, at
5 least, look at it.

6 Q. Okay. So are you looking at your
7 Amended PSLRA Certification, just so we're clear
8 on the record?

9 A. Yes. It just -- I have to switch
10 back and forth. It would be really difficult to
11 do it.

12 Q. Yes.

13 A. I would have to open up another tab.
14 So just let me just look; 2/29.

15 Q. And just, you know, Mr. Cozzarelli,
16 you're free to look at the exhibit as much as you
17 need to. I wasn't intending to ask you to
18 compare every trade to your certification.

19 A. Oh, well, yeah, it's 15 -- it's
20 15,700 shares on February 29th. That's it.

21 Q. Right. And so -- yes, so that's
22 fine.

23 But so if you turn to -- in
24 Exhibit 10 page ending in 135, you'll see a Wells
25 Fargo confirmation.

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2 Do you see that?

3 A. 135, Exhibit -- the page is marked
4 PLA-000135 and that's a confirmation. Yes,
5 that's the purchase of 1251.

6 Q. Okay, great. So we're on the same
7 page now.

8 You'll see at the top -- top right
9 corner there is a statement that says, "your
10 financial advisor Thomas Cannizzo."

11 Do you see that?

12 A. Yeah.

13 Q. So who is Thomas Cannizzo?

14 A. He's the -- he was the Bank Officer
15 who opened the account and managed our account.
16 I met with him personally a couple of times.

17 Q. Okay. When you say he managed your
18 account, you know, what did his management
19 responsibilities entail?

20 A. He executed the trades that we told
21 him to execute.

22 Q. Okay. Did he provide you any advice
23 on what trades to execute?

24 A. Not with regard to -- no. The answer
25 is, no.

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2 Q. Okay. And, you know, aside from
3 asking Mr. Cannizzo to execute the trades, did
4 Shipco discuss its investments in FXCM with
5 Mr. Cannizzo?

6 A. No. You mean discuss the -- discuss
7 rationales, reasons, things like that?

8 Q. Yeah, that's right.

9 A. No.

10 Q. Okay. And was it February 29th, 2016
11 the first time that Shipco invested in FXCM
12 securities?

13 A. I'm assuming that's -- if that's the
14 earliest date, then the answer is, yes. Well,
15 hey, it's on that chart.

16 Q. Just for the record, you're looking
17 at your Amended PSLRA Certification, right?

18 A. Yes, yeah. Well, I'm sorry, I'm
19 looking at the certification.

20 Where is the Amended?

21 I thought I organized this. Oh, here
22 it is. Okay. Sorry. At 2/29 of '16 looks like
23 the first date.

24 Q. Okay. At that time was Shipco aware
25 of what has been referred to as the "Swiss

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2 National Bank Flash Crash," "the SNB Flash
3 Crash"?

4 A. No.

5 Q. Okay. So Shipco had no understanding
6 at that time what the "SNB Flash Crash" had on
7 FXCM?

8 A. Let me take that back.

9 What it -- say it -- try and define
10 -- I don't know what that means, "flash crash."

11 Is that some event? Is that when
12 they lost their -- was it Leuda pulled their
13 financing; is that the "flash crash"?

14 Q. So, when I say, "SNB Flash Crash,"
15 I'm referring to the abandonment by the Swiss
16 National Bank of the Euros Swiss peg that
17 resulted in a liquidity event.

18 Are you familiar with that event?

19 A. I think that's part of -- part and
20 parcel of when they lost their line of credit.
21 If that's the "flash crash," then, you know, we
22 were -- we knew that there was a drop from the
23 high, which was anywhere from one -- you know,
24 180 was the high. There was a range of 150, 180,
25 160, whatever it was, and we knew there was a

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2 drop due to that liquidity issue and that was
3 their line of credit, which gave them the ability
4 to buy and sell currency. That allowed them to
5 be a market maker, as I understood. And they
6 were doing a refinancing from what they told --
7 from what they published.

8 Q. Do you have any -- you know, you may
9 have already said this. But -- actually, strike
10 that.

11 Was Shipco aware at the time it made
12 its first time that FXCM had to take out
13 \$300 million loan from Leucadia to keep the
14 company operating?

15 A. Yes.

16 Q. And did that factor affect Shipco's
17 decision to start buying FXCM securities?

18 A. As I said before, it was that -- it
19 was the lack of liquidity. They, basically, had
20 a debt they needed to refinance and when they
21 refinanced the debt, it would be in a much better
22 position.

23 And, presumably -- our rationale was
24 that, presumably, the stock would rise in value
25 due to getting more favorable terms on that

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2 \$300 million. Because as I recall, they were
3 fairly onerous terms for the \$300 million. At
4 least, that's what the press report said.

5 Q. Okay. So Shipco -- you know, I
6 guess, if you turn to Exhibit 9, which is the
7 Amended PSLRA Certification.

8 Shipco continued --

9 A. Nine?

10 Q. Yes.

11 A. I'm sorry, nine?

12 Q. Yes. Sorry, Exhibit 9.

13 A. Yeah.

14 Q. This is a copy of the Amended PSLRA
15 Certification --

16 A. Yes.

17 Q. -- that, I believe, you've been
18 looking at in hardcopy.

19 A. I'm looking at it. It's soft copy
20 now. Go ahead.

21 Q. Alright. So Shipco continued to
22 purchase FXCM stock through March 10th, 2016.

23 Do you see that?

24 A. Yes.

25 Q. And why did Shipco continue to

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2 with somebody else. That somebody else might
3 gather some information and supply it back to me.

4 I might look at it and say, they're
5 not going to see this or understand it in this
6 format, and I'll summarize and send it to them.
7 So we'll have internal work product.

8 And, you know, that's why I say an
9 hour. You know, you contact Mr. Stroyer as an
10 example, did we sell any of position? That might
11 have taken him a total of 15 minutes to answer
12 that question. Or he might have answered it in
13 two minutes. So I gave you a best guess.

14 If you actually want numbers, I
15 suppose with spending a lot of time we can come
16 back and give you accurate numbers and then we'd
17 ask for that as compensable time to find out what
18 the numbers are.

19 Q. Okay. So, you know, to kind of
20 summarize, you mean both more
21 decision-making-type management that would be
22 done by sounds like Mr. Jepsen, for example, and
23 there's also more administrative tasks that would
24 be done by --

25 A. Others.

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2 Q. -- a secretary or something of that
3 sort?

4 A. Well, we don't have many of those.
5 What, generally, happens is we have
6 administrative staff. We have people that are
7 manager roles that might gather up information
8 and then we as executives might review the
9 information. So it would be Jepsen and I would
10 sit down and go over something. So those would
11 be the roles.

12 But he is -- you know, if I had to
13 guess, he's about an hour and a month on this and
14 that might include conferring with the colleagues
15 over in Denmark and things like that.

16 Q. Do you think Shipco's claims are
17 typical of the class of representatives that you
18 purport to represent?

19 MR. KIM: Objection to form. I think
20 this asked and answered and, also, it calls for a
21 legal conclusion.

22 A. I would think so.

23 Q. And why?

24 A. There's -- because if you read the
25 complaint, there's allegations that are fairly

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2 specific about misrepresentations that have
3 occurred along the way by the people at FXCM.
4 Maybe it wasn't all of the misrepresentations,
5 maybe it was some of the misrepresentations, but
6 overall the effect to the damaged parties is the
7 same. So, you know, you could have a cascade of
8 different -- "cascade" is the wrong word.

9 You could have a panoply of different
10 reasons why we're all in the same boat and it
11 could be varying degrees of the misrepresented
12 facts that have caused damage to the injured
13 parties here.

14 So, yes, I think we're typical of the
15 shareholder -- the shareholder claims.

16 Q. Alright. Do you have an
17 understanding that Defendants have served
18 requests for a production of documents from
19 Shipco?

20 A. I believe that we received that, yes.

21 Q. Did you assist with preparing a
22 response to that document?

23 A. Yes.

24 Q. And who was responsible for finding
25 documents responsive to those requests?

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2 A. Well, I was -- I was involved at --
3 this is kind of the point of contact for the
4 lawyers. They would -- and then I would deal
5 with anybody else that was involved so that they
6 didn't have to manage four or five different
7 points of contact. It just made for a more
8 efficient way to exchange information.

9 So, you know, they told us what --
10 you know, we looked at the document production
11 and I understand it's -- you write it in a very
12 broad expansive way and if I -- if we spent all
13 of our time responding to every single nuance of
14 the document production, it would be
15 counterproductive to all parties concerned,
16 including you because you'd get a document on it.

17 So what we tried to do was be
18 intelligent about how we responded to it with the
19 assistance of our lawyers, gathered up the
20 relevant information and supplied it to you. If
21 it exists, you got it. If it doesn't exist, then
22 we said it didn't exist.

23 There may be certain things that we
24 have to go back and look for again. This is the
25 normal process, as I understand it.

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2 Q. I just want to get a better
3 understanding of what kind of search you
4 undertook for documents.

5 Did you check for e-mails?

6 A. The answer is, I just asked for
7 e-mails from Mr. Jepsen.

8 I haven't done an e-mail search for
9 myself yet, which I will do.

10 It kind of came up in the context of
11 preparing for this deposition and it may very
12 well be that we have to supply you with some
13 information that's additional responses. There
14 may be some non-privileged communications that
15 are -- that you're entitled to.

16 I just don't -- we haven't gone
17 through them all, as I'm sure there are e-mails.
18 Everybody uses e-mail.

19 You know what -- they call the "E" in
20 e-mail stands for evidence. So I assume that
21 you're going get it. And it's not a matter of
22 keeping it from you. It's a matter of
23 understanding whether there's privilege in it or
24 non-privilege in it and that we have to go
25 through with The Rosen Law Firm.

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2 And, obviously, that is one of the
3 things that's going to take a lot of time for us
4 to go through with them because -- and you asked
5 how much time is spent, that could be one of
6 those instances.

7 Q. In your memory, did Mr. Jepsen have
8 any e-mails that you turned over to your Counsel
9 as potentially responsive to that request?

10 A. No. I haven't turned over any
11 e-mails and I thought I was clear on that. I
12 have not turned over any e-mails. I just started
13 looking for them in the request.

14 Q. I see, okay.

15 In connection with that, did you also
16 request e-mail searches with any employees of
17 Scan?

18 A. I just sent the request over to Scan
19 as well.

20 Q. Okay. Did you check for any share
21 drive files? And by "share drive," I mean, an
22 electronic file that would be accessible to
23 multiple users on a centralized repository.

24 A. The answer is these documents would
25 not be on any form of share drive, since this is

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2 -- these are highly confidential within our
3 organization. They are confined. I know exactly
4 where they would be.

5 And, in terms of electronically
6 stored information, they would not be on a cloud
7 system, server or anything like that. We did
8 away with servers. We moved over to more
9 distributed storage and these wouldn't be on
10 that.

11 Q. Okay. And, just following up on one
12 point with the e-mails, you said that the search
13 is in progress.

14 Whose e-mails are being searched
15 currently?

16 A. Well, mine -- mine, Mr. Jepsen,
17 Mr. Dyrholm's, Mr. Stroyer's, Mr. Jaepelt's.
18 They may lead to others, but that would be the
19 search. That would be the top level search at
20 this point.

21 Q. Okay. Do you know if you are using a
22 date range for the e-mail search?

23 A. Well, it would be -- to be safe, we
24 probably go six months before our first trade and
25 then take it to date.

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2 Q. Okay. Did you --

3 A. I think that -- I think that's a
4 reasonable range, because I don't think there was
5 any discussion having to do with FXCM before six
6 months. I mean, if something turns up, then,
7 obviously, we'll say we didn't send it.

8 Q. Okay. Did you check for any hardcopy
9 files?

10 A. Yes.

11 Q. Physical copies?

12 A. Yes.

13 Q. And did you identify any?

14 A. Yes.

15 Q. What --

16 A. I mean, they're -- bank statements
17 that you have are physical copies. They're not
18 electronic copies. That's an example. There
19 might be account agreements. Those are the kinds
20 of things that would be physical.

21 The printout -- the printouts of --
22 there was one other one. The printouts of those
23 news articles, those were kept physically, not
24 electronically. That's because I'm old school,
25 you know.

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if you're talking back and forth communications with our lawyers, getting documents together, that kind of thing?

Q. Yes.

A. Talking to internal staff, talking to our internal management? I couldn't tell you. I mean, the days go by. I don't even know what day it is in this environment.

This has gone on for several years. Reasonable estimate is based on maybe ten hours a month at most over the course of the litigation. That's on the high side.

Q. Alright. And what about others at Shipco?

A. I would say their roles are limited to internal communications. They're probably in the range of an hour a month, if that.

Q. So what percentage of your overall time as an employee of Shipco would you estimate that you devote to managing the FXCM class action litigation?

A. Well, let's see. Out of an 80-hour work week -- let me just...

I figure you're talking about -- let

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me see.

Did I say ten hours a month? So ten hours a month times -- 360 -- about 1/16th --

Q. Again, I'm not trying to make you do math like that. Would you say it's about ten --

A. It's like 1/16th of my time.

Q. Okay. Just going back to one thing you said a minute or two ago. You mentioned that others at Shipco have more limited roles with respect to managing litigation and they would spend maybe an hour or so a month.

Who were you referring to when you were talking about the others?

A. Well, I'm trying to -- it's more administrative time than anything.

When you say, manage litigation, were you using that in terms in the context of administering -- an administrative function interacting with lawyers. You know, "managing litigation" in as far as running it, I don't think is the case.

What we're doing is, lawyer calls up and says, I need this. So I'm the point of contact. I then have a followup, as an example,

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2 with somebody else. That somebody else might
3 gather some information and supply it back to me.

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5 not going to see this or understand it in this
6 format, and I'll summarize and send it to them.
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4 Maybe it wasn't all of the misrepresentations,
5 maybe it was some of the misrepresentations, but
6 overall the effect to the damaged parties is the
7 same. So, you know, you could have a cascade of
8 different -- "cascade" is the wrong word.

9 You could have a panoply of different
10 reasons why we're all in the same boat and it
11 could be varying degrees of the misrepresented
12 facts that have caused damage to the injured
13 parties here.

14 So, yes, I think we're typical of the
15 shareholder -- the shareholder claims.

16 Q. Alright. Do you have an
17 understanding that Defendants have served
18 requests for a production of documents from
19 Shipco?

20 A. I believe that we received that, yes.

21 Q. Did you assist with preparing a
22 response to that document?

23 A. Yes.

24 Q. And who was responsible for finding
25 documents responsive to those requests?